

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10910 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

DINESH H. JADAV

Versus

CENTRAL BANK OF INDIA

Appearance:

1. Special Civil Application No. 10910 of 2003
MS MAYA S DESAI for Petitioner No. 1
MR KIRIT J MACWAN for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 28/09/2004

ORAL JUDGEMENT

1. In this petition, the petitioner has challenged
the order of the Disciplinary Authority dated 6th May,

1994 by which the petitioner was discharged from service, as also, the order of the Appellate Authority dated 30th August, 1994 by which the appeal of the petitioner was rejected.

2. Short facts leading to the present petition are that the petitioner was appointed to the post of Sub Staff (Peon) by the respondent-bank on 2nd September, 1985. On 17th June, 1993, the respondent issued a charge-sheet to the petitioner in which two charges were levelled against the petitioner. The first charge was to the effect that though the educational qualification norms for the post of Sub Staff (Peon) was that the candidate must possess minimum of 8th Standard and maximum of SSC/Matriculation failed, the petitioner made a misdeclaration that he is SSC (old) failed though he was having higher educational qualification and he was studying in T.Y.B.A in Sabarmati Arts and Commerce College in 1982. The second charge levelled against the petitioner was that while applying for the post of Sub Staff (Peon) vide his application dated 15th May, 1985, in order to extend his date of superannuation by three days, the petitioner misdeclared his date of birth as 6th February, 1959 as against actual date of birth which is 6th February, 1956 and also submitted a false certificate to that effect.

3. A Departmental Inquiry was conducted against the petitioner pursuant to the said charge-sheet dated 17th June, 1993 and at the end of oral enquiry, the Inquiry Officer was pleased to submit his report in which the Inquiry Officer was pleased to conclude that the charges against the petitioner are proved. The petitioner was also given an opportunity to represent his case before the Inquiry Officer and in his defence statement dated 4th September, 1993, the petitioner did not seriously dispute that he has studied upto T.Y.B.A; nor did he dispute that in his application seeking appointment he had declared his qualification as SSC(old) failed. In his defence statement with respect to charge no.2 regarding misdeclaration of date of birth, the petitioner did not dispute that he had declared the year of his birth as 1959 instead of correct year of 1956. He, however, sought to explain the discrepancy by stating that the error occurred since the petitioner did not notice the number, He submitted that on the basis of incorrect year of birth, the petitioner did not receive any benefits. Thus, in his defence statement, the petitioner did not seriously dispute either of the allegations against him.

4. The Disciplinary Authority considering the Inquiry Officer's report and the petitioner's representation was pleased to pass an order of discharge from service against the petitioner on 6th May, 1994. Aggrieved by the said order, the petitioner appealed against the same before the Appellate Authority. The Appellate Authority, however, was pleased to reject the appeal. The petitioner has, therefore, impugned these orders in the present petition as mentioned above.

5. Appearing for the petitioner, learned Counsel Ms. Maya Desai has submitted that there was no ill intention on the part of the petitioner in declaring his educational qualification or the date of birth. She has submitted that the bank itself had issued a circular wherein it is provided that those who have voluntarily revealed the misdeclaration in the educational qualification, such employees are let off by minor penalties. She further submits that on the basis of incorrect date of birth, the petitioner has not received any benefits and that, therefore, the same cannot be treated as gross misconduct and the extreme penalty of discharge from service is, therefore, not warranted. She has pointed out that the service regulations provided for number of penalties and the disciplinary authority should have keeping in mind the factual aspects of the matter awarded lesser punishment. She has urged this Court to interfere in the quantum of penalty and has requested for a lesser punishment than that of discharge from service.

6. Appearing for the respondent-bank, learned Counsel Mr. K.J. Macwan has supported the action of the Management. He has submitted that the charges against the petitioner are conclusively proved. He submitted that the charges being serious in nature amounting to gross misconduct, no leniency can be shown and he has, therefore, submitted that the impugned orders be confirmed.

7. Having perused the material on record and considered the submissions made on behalf of the contesting parties, it is clear that the charges against the petitioner were conclusively proved. In fact, there was no serious dispute raised by the petitioner during the course of the enquiry regarding the allegations made against him. The learned Counsel for the petitioner has also not seriously assailed the findings arrived at by the Inquiry Officer as accepted by the Disciplinary Authority. Even otherwise, I find that there was sufficient material on record of unimpeachable nature to drive home the charge. There was sufficient documentary

evidence to suggest that the petitioner misdeclared his qualification and also tried to suppress his age by three years by declaring the year of his birth as 1959 in his application form seeking appointment instead of correct date of birth of 1956. In that view of the matter, the Disciplinary Authority was justified in concluding that the charges are proved.

7. The short question, therefore, that remains for consideration is whether the penalty imposed upon the petitioner was harsh and excessive so as to warrant interference by this Court in exercise of powers under Articles 226 and 227 of the Constitution of India. The law on the power of the Court or Tribunal to interfere with the quantum of punishment imposed by the employer is no longer res integra. In the decision of *B.C.CHATURVEDI v. UNION OF INDIA AND OTHERS* reported in AIR 1996 SC 484, the Honourable Supreme Court has held that the Court can interfere with the quantum of punishment only if the punishment is shocking to the conscience of the Court. In the decision of *REGIONAL MANAGER, U.P.S.R.T.C., ETAWAH AND OTHERS v. HOTILAL AND ANOTHER* reported in AIR 2003 SC 1462, the Honourable Supreme Court on the basis of the earlier decisions wherein it was observed that, "The disciplinary authority and the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct and the High Court or the Tribunal while exercising power of judicial review cannot normally substitute its own conclusion on the penalty and impose some other penalty", was pleased to uphold the penalty imposed by the S.T.Corporation of the State of U.P. of dismissal from service on the conductor who was found to be carrying ticketless passengers.

In the decision of *CHAIRMAN AND MANAGING DIRECTOR, UNITED COMMERCIAL BANK AND OTHERS v. P.C.KAKKAR* reported in (2003) 4 SCC 364, one again, the Honourable Supreme Court was pleased to observe that punishment imposed by the Disciplinary Authority unless shocking to the conscience of the Court or Tribunal are not subject to judicial review and where the Court finds the punishment to be shockingly disproportionate, it must record reasons for coming to such conclusion and merely stating that the punishment was shockingly disproportionate is not sufficient.

8. Keeping the above judicial principles in mind if we examine the facts of the present case, it is clear

that charges of fabrication of documents and misdeclaration for suppressing the age were levelled against the petitioner and these charges were proved pursuant to a validly conducted inquiry. No submissions have been made to suggest that there was any violation of principles of natural justice in conduct of the inquiry. Thus, the Disciplinary Authority was pleased to impose the penalty of discharge from service on the basis of proved misconduct of serious charges levelled against the petitioner. The penalty imposed, therefore, cannot be termed as disproportionate so as to shock the conscience of the Court. The reliance placed by the learned Counsel for the petitioner on the circular dated 23rd January, 1979 is also of no avail. Firstly, the benefit of leniency was to be given to those who had come forward and declared their mistake and not to those who were caught by the bank and charge-sheeted. Secondly, in addition to the charge of misdeclaration of educational qualification, the petitioner was also charged with an attempt to misdeclare his age which if succeeded would have permitted the petitioner to superannuate three years later than the correct year of his superannuation. This charge was also proved. The penalty of discharge from service, therefore cannot be interfered with.

9. In the result, the petition fails and is hereby rejected. Rule is discharged. No orders as to costs.

(Akil Kureshi, J.)

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